Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

EL VOCERO DE PUERTO RICO
(CARIBBEAN INTERNATIONAL NEWS CORP.)
and VICTOR GONZALEZ,

Petitioners,

v.

THE COMMONWEALTH OF PUERTO RICO and
CARLOS NEGRÓN-ROSARIO,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The Commonwealth Of Puerto Rico

PETITION FOR WRIT OF CERTIORARI

JUAN R. MARCHAND-QUINTERO
Counsel of Record for Petitioners
P.O. Box 9024227
San Juan, Puerto Rico 00902-4227
Tel. (787) 721-2495
Fax (787) 725-3066

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

55 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court of Puerto Rico erred, under controlling First Amendment precedent, by letting stand the closure of a jury trial to the press and the public during the testimony of a minor sex victim, when the closure order was issued: a) without previously giving petitioner opportunity to be heard; b) without requiring from the Commonwealth, proponent of the closure, the presentation of any evidence that would justify closing the trial; c) without setting forth specific facts justifying closure, or that due consideration was given to less burdensome alternatives; and d) without giving due consideration to the fact that the press and the public had been allowed to remain in court during the victim's testimony at the preliminary hearing stage, without objection.

2. Whether a trial judge can summarily close a jury trial to the press and public, only allowing the continued presence of those members of the press who previously attended the preliminary hearing in the same criminal prosecution.

STATEMENT OF CORPORATE DISCLOSURE

Petitioner Caribbean International News Corp., is a non-public corporation, created under the laws of the Commonwealth of Puerto Rico with main offices in San Juan, which publishes the newspaper El Vocero de Puerto Rico. Petitioner has no parent corporations, or nonwholly owned subsidiaries.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Caribbean International News Corp. and Victor González-Orta ("Mr. González"),[1] respectfully pray that a Writ of Certiorari issue to review the Supreme Court of the Commonwealth of Puerto Rico.

I. OPINIONS AND ORDERS ENTERED IN THE CASE

1. On September 25, 1997 Superior Judge Julio Soto-Ríos summarily vacated the courtroom by order verbally issued from the bench. A translated transcript of the complete discussion and order in open court is provided, Appendix ("App.") 1-14.

2. On September 26, 1997 a written order was issued by the trial judge, App. 15-20, confirming summary closure to all persons except Mr. González, based only on his "previous attendance" at the preliminary hearing stage of the case.

3. On September 30, 1997 the Circuit Court of Appeals denied issuance of a writ of certiorari, holding that the case is moot. App. 21-25.

4. On February 27, 1998 the Supreme Court of Puerto Rico denied Petitioner's petition for certiorari, without opinion. App. 26-27.

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[1] Caribbean International News Corp. publishes the newspaper El Vocero de Puerto Rico ("El Vocero"), and Mr. González is a full time El Vocero reporter at all times pertinent to this matter.

II. JURISDICTION

The resolution of the Supreme Court of Puerto Rico denying the request of certiorari was issued on February 27, 1998. This Court has jurisdiction pursuant to 28 U.S.C. §1258, since petitioners claimed before the trial court their federal constitutional right to attend criminal trials pursuant to the First Amendment to the U.S. Constitution and its interpretive case law.

III. LEGAL PROVISIONS INVOLVED

1. The First Amendment to the U.S. Constitution, which states that "Congress shall make no law . . . abridging the freedom of speech, or of the press[.]"

2. Puerto Rico Constitution, article II, §8: "Every person has the right to the protection of law against abusive attacks on his honor, reputation and private or family life."

3. Puerto Rico's Rule 131 of Criminal Procedure ("Rule 131"), as amended by Public Law 65 of June 22, 1978, 34 LPRA Ap.II, R. 131, which states as follows:

> Rule 131. Witnesses; Evidence; Public Trials; Exclusion of Public
>
> Unless otherwise provided by law and by these rules, the testimony of a witness in all trials shall be oral and in open court, and the admissibility of the evidence and the competency and privileges of the witnesses shall be

governed by the provisions of the Law of Evidence of Puerto Rico.

In suits for incest, rape, sodomy, seduction, lustful or indecent acts, and in indecent exposure or the attempt thereof, the court may exclude the public from the courtroom during the injured person's testimony, admitting only those persons who have a legitimate interest in the case, such as court officials and the party's lawyers and relatives. Prior to the order of exclusion, the court shall hold a private hearing to determine if the injured person needs this protection during his testimony.

4. Articles 1 and 2 of the Victims and Witnesses Protection Act, 25 LPRA §§973 and 973(a). App. 28-29.

5. Puerto Rico's Rule 43 of Evidence, 32 LPRA Ap. IV R. 43, which in pertinent part states as follows:

Rule 43. Mode and order of interrogation and presentation of evidence

. . .

(C) The judge presiding at a trial or hearing shall have control and ample discretion over the mode of presenting evidence and interrogating the witnesses so as to make the presentation of evidence as effective as possible for the ascertainment of truth assuring the speediness of the proceedings and avoiding needless delay.

IV. STATEMENT OF THE CASE

Statement of Facts and Procedural History

For many years, Mr. González has been the El Vocero reporter regularly assigned to the Bayamón Judicial Center, where the trial by jury against Carlos Negrón-Rosario was scheduled to begin on September 25, 1997. Probable cause had been found for kidnapping, statutory rape and inducing a minor ("the victim") to steal from her mother $100,000.00 in cash, after which the couple had secretly left Puerto Rico. During the two-month period that the couple successfully evaded arrest by the F.B.I. in several cities of the United States, the matter received ample media coverage in Puerto Rico. The victim's mother was interviewed on television, and the victim's photograph was made available to the press and published to aid in locating her.

Mr. González had covered pretrial proceedings since the defendant's arrest in California and arraignment in Puerto Rico. El Vocero reported on the hearing for probable cause for arrest, and later reported on the public testimony given by the victim during the original preliminary hearing held in the Bayamón District Court. Mr. González and members of the public were also in attendance during a **de novo** preliminary hearing later held before the Bayamón Superior Court.[2] The reporter again remained in the courtroom during the victim's testimony

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[2] As a result of this hearing, on which El Vocero also reported, certain charges that had been initially dismissed in the original preliminary hearing were reinstated. A guilty verdict against the defendant was ultimately returned by the jury on all counts.

without objection by the prosecution. At no time before trial did the prosecution ask for protection of the victim, or that testimony be given by her in private.

At the commencement of trial, Mr. González again was present in the courtroom and ready to observe and report on the proceedings. After the jury was sworn in, the prosecuting attorney announced that the victim would be the Commonwealth's first witness, and requested an order to clear the courtroom during the victim's testimony. For the record, the district attorney simply expressed that the victim had requested the exclusion of the press and the public. App. 2. The prosecution did not state the circumstances or reasons for such a request, did not offer the testimony of the victim regarding the request, and simply made conclusory reference to the victim's rights under the Victims and Witnesses Protection Act (hereinafter the "Act"), without specifying those claimed rights. Judge Soto-Ríos merely summarized the request made by the prosecution, and confirmed that "the young lady herself had requested the exclusion pursuant to the Victims Act." App. 2. The judge turned to counsel for defendant and indicated that those were the prosecution's "arguments that are being submitted." App. 3.

Counsel for the defendant opposed the request made by the prosecution, stating that Mr. González and the public had indeed been present at the preliminary hearings, and claiming the defendant's constitutional right to a public trial. App. 3-6. Judge Soto-Ríos described the right to privacy of crime victims as a "compelling state

interest" protected under the Act (App. 8-9),[3] and that its purpose was to "defend, protect the legitimate interest of the victim that his or her case, his or her testimony, at least, be in private, outside the presence of the public." App. 10. He referred to the victim's request to testify in private as her "right" (App. 11), and stated for the record:

> [T]he presentation of evidence need not take place as long as the victim claims her right pursuant to the law, and she is claiming it. And this is a right of a constitutional nature that the victim has, included statutorily, because it is the right to privacy. And that is a right with as much or equal weight to that of a fair, impartial and public trial.

App. 13. The trial court's reading of the Act is a) that the request for closure of the trial stems from the victim's "right pursuant to the law"; b) that the victim is exempted from presenting evidence justifying the exercise of the "right" as long as she "is claiming it"[4]; and c) that mere reference to the Act is adequate justification required under Rule 131, which requires evidence that "the injured person needs this protection."

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[3] The trial judge referred to the amendment to Rule 131, authorizing the closure of trial during testimony in sexual offense cases, as responding to a series of unidentified federal cases "endorsed by the U.S. Supreme Court." (App. 8). No cases were mentioned by name, subject or date. The latest amendment to Rule 131 was adopted by Public Law 65 of June 22, 1978, and it simply added the second paragraph, providing for the exclusion of the public while a sexual victim testifies.

[4] It will be noted that neither the prosecution nor Judge Soto-Ríos made specific reference to the text of the Act which allegedly provides the victim the "right" to close a public trial.

Having heard the defendant's argument against closure based on his right to a public trial, Judge Soto-Ríos ordered "the immediate removal of all public . . . including the press." App. 13. Mr. González stood up, was recognized, and asked whether the order included him as a member of the press, to which the judge answered in the affirmative, expressing that "what happens is that the victim has requested that the public be excluded, including the press, from the hearing." App. 14. The clear implication was that closure was somehow inevitable, because the victim had claimed her "right" to testify in private. Within seconds, the courtroom was emptied of all members of the public and the press, including Mr. González, and the trial began with the testimony of the victim, behind closed doors. Her testimony had not been completed when the Court recessed until the next day.

On the second day of trial, September 26, 1997, counsel for petitioners appeared before Bayamón Superior Court and argument was heard regarding the constitutional validity of the summary closure of trial, already in force. Petitioners cited the First Amendment precedents of this Court regarding the presumption of access to trials, and the requirement of a case-by-case adjudication with specific findings on the record justifying closure. Petitioners pointed out the absence of evidence or specific findings that closure was necessary. After a recess, Judge Soto-Ríos served on the parties a written Resolution (App. 15) maintaining in effect the closure of trial, in order to "address the claim by the minor in accordance with [the Act] . . . and her constitutional right to privacy." App. 19.

The court once again ordered all persons, including journalists, to immediately abandon the courtroom, but excepted Mr. González, because he had been present at the two preliminary hearings held in the case. App. 19. From the Resolution it does not appear that the exception is specifically based on an implied waiver of the victim's privacy rights by having testified in public during the preliminary hearings, or on the implicit recognition of a "legitimate interest" in the case on the part of Mr. González.[5]

Petitioners filed a petition for certiorari before the Circuit Court of Appeals of Puerto Rico on September 29, 1997, seeking not only the reversal of the complete closure ordered summarily on September 25, 1997, but also the implied "pre-qualification" imposed on a journalist in the September 26, 1997 Resolution in terms of required participation in pretrial proceedings of the same case, in order to remain in the courtroom at trial. On September 30, 1997, the Circuit Court of Appeals dismissed the petition as moot, without reaching the constitutional arguments against both closure orders. App. 21-25.[6] On

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[5] Under Rule 131's second paragraph, the trial court can clear the courtroom, allowing to remain "those persons having a legitimate interest in the case, such as court officials and the party's lawyers and relatives." No mention is made of journalists.

[6] Instead, that court focused on El Vocero's separate motion, requesting that another staff reporter, who had not covered the case before trial as had Mr. González, be allowed in court during the continuation of the victim's testimony. The reporter was allowed in court that morning, making the motion moot. The court makes reference to the Petition for Certiorari **en passant** in the first sentence of the Resolution, App. 21, and then

that same date, Petitioners requested a rehearing and the adjudication of the constitutional validity of the two closure orders issued by Judge Soto-Ríos, setting forth that the matter was "capable of repetition, yet evading review." The Commonwealth Attorney General argued that the case was moot, and that the trial court's rulings had all been favorable to El Vocero.[7] The rehearing was denied without opinion.

Petition for certiorari was timely filed before the Supreme Court of Puerto Rico, which summarily denied issuance of the writ on February 27, 1998 without opinion. App. 27.

REASONS FOR GRANTING THE WRIT

1. The controversy is not moot, because the summary closure of a trial in the circumstances of this case is "capable of repetition, yet evading review."

The Circuit Court of Appeals and the Supreme Court of Puerto Rico erred by letting the closure orders of the trial court stand. This Court has consistently recognized that "jurisdiction is not necessarily defeated simply because the order attacked has expired, if the underlying dispute between the parties is one 'capable of repetition,

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deals exclusively with the separate motion without mentioning the Petition for Certiorari again.

[7] The argument can only be advanced by ignoring the summary expulsion of the press and public, including Mr. González, from the courtroom on September 25, 1997.

yet evading review.' " *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 546-547 (1976). See *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 6 (1986) ("*Press-Enterprise II*"); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603 (1982)[8]; *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 563 (1980)[9]; *Gannett Co. v. DePasquale*, 443 U.S. 368, 377-378 (1979); *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911).

The courts below have let stand a statutory and constitutional interpretation which is of general application to criminal cases involving all types of sexual offenses. Since the Circuit Court of Appeals openly ignored the arguments on the merits, and the Supreme Court of Puerto Rico denied review, "it is reasonably foreseeable that other trials may be closed by other

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[8] The Court held, in a case that is similar to the present:

> It can reasonably be assumed that Globe, as the publisher of a newspaper serving the Boston metropolitan area, will someday be subjected to another order relying on §16A's mandatory closure rule. And because criminal trials are typically of "short duration," ibid., such an order will likely "evade review, or at least considered plenary review in this Court." We therefore conclude that the controversy before us is not moot within the meaning of Art. III, and turn to the merits.

[9] "This Court has frequently recognized, however, that its jurisdiction is not necessarily defeated by the practical termination of a contest which is short-lived by nature." Id. Criminal trials are typically of short duration, so closure orders are the type that would tend to "evade review, or at least considered plenary review in this Court." *Nebraska Press Assn.*, supra, 427 U.S., at 547.

judges without any more showing of need than is presented on this record." *Richmond Newspapers*, supra, 448 U.S., at 563.[10] All that the prosecution must do is convey to a trial court that the injured party wishes to testify in private, for the courtroom to be cleared of the public and the press. Since closure was not made to depend on the particular facts of this case or the victim's personal circumstances, it is virtually automatic once the claim for closure is made.

The procedure followed by the trial court can also be used to close criminal trials in a diversity of situations. For example, neither Rule 131 nor the Act are limited in their scope to victims who are minors; their text is equally applicable to all victims, without regard to their age. Additionally, the Act is not limited to testimony by victims at trial; it is reasonable to foresee that the privacy argument advanced in this case to close the trial could be equally suited to request closure of preliminary hearings during the victim's testimony.

The underlying controversy in this case is not rendered moot merely because Judge Soto-Ríos allowed the reporter to be present on the second day of trial. See, *City of Mesquite v. Aladdin's Castle*, 455 U.S. 283 (1982); *United States v. W. T. Grant*, 345 U.S. 629 (1953).

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[10] It is a foregone conclusion that in the future Judge Soto-Ríos will clear his courtroom every time a sexual victim asks for closure to give testimony. Prosecutors do not even have a burden of proof to carry, pursuant to the procedure followed in this case by the trial court and approved **sub silentio**.

2. The trial court's initial closure of trial to the press and public violated applicable First Amendment precedent, while its written order allowing petitioner's reporter to remain in the courtroom, merely because he had been present at the preliminary hearings, imposes an unconstitutional requirement on the full enjoyment of petitioners' right to freedom of speech and of the press.

The right of access to criminal trials has been recognized as a constitutional right arising under the First Amendment to the U.S. Constitution.[11] See generally, *Globe Newspaper Co.*, supra, 457 U.S., at 603-610; *Richmond Newspapers*, supra, 448 U.S., at 558-581. The presumption of openness has been held to apply to the process of jury selection, *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984) (*Press-Enterprise I*), as well as preliminary hearings whose adversary nature makes them sufficiently similar to a trial. See *Press-Enterprise II* and *El Vocero*, supra.

The presumption that trials shall be open to the public and the press is very strong, and "[a]bsent an overriding interest articulated in findings, the trial of a criminal case must be open to the public." *Richmond Newspapers*, supra, 448 U.S., at 580. In *Press-Enterprise I* this Court again held that the presumption of openness may be overcome only "by an overriding interest based on findings that closure is essential to preserve higher values

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[11] This Court's First Amendment decisions are fully applicable to Puerto Rico. *El Vocero de Puerto Rico v. Puerto Rico*, 508 U.S. 147, 148, n. 1 (1993); *Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 331, n. 1 (1986).

and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered." 464 U.S., at 510. See also, *El Vocero*, supra, 508 U.S., at 151; *Press-Enterprise II*, supra, 478 U.S., at 13.[12]

The reasons advanced by the party interested in closure must be weighty. When a party seeks to deny access in order to "inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest." *Globe Newspaper*, supra, 457 U.S., at 607. In that case, this Court accepted that the state interest in "the protection of minor victims of sex crimes from further trauma and embarrassment" was compelling. Id. However, the Massachusetts statute in question was held not to be "narrowly tailored" to bring about the state's asserted interest, since it provided for mandatory closure of trial during the minor's testimony, a procedure that ignores that "the circumstances of the particular case may affect the significance of the interest." Id., at 608. The state's interest "could be served just as well by requiring the trial court to determine on a case-by-case basis whether the State's legitimate concern for the well-being of the minor victim necessitates closure." Id.

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[12] A similar analysis was utilized by this Court in *Waller v. Georgia*, 467 U.S. 39 (1984), although the setting was a suppression hearing, and openness was sought by the defendant pursuant to his Sixth Amendment right to a public trial. Under those circumstances, the hearing must be open "unless the party seeking to close the hearing advances an overriding interest that is likely to be prejudiced." Id., at 47.

The statutes in question in the present case pursue substantially the same interests as the Massachusetts statute analyzed in *Globe Newspaper*.[13] Therefore, the trial court should have held an evidentiary hearing in order to determine if the victim's personal circumstances warranted closure of trial in this particular situation. Specific findings on the record were clearly required. However, Judge Soto-Ríos exempted the Commonwealth from producing any admissible evidence, relying solely on what the prosecution said that the victim had requested, and shifted the burden on the defendant to justify that the trial be kept open. The trial court simply made reference to Rule 131 and the Act, and the victim's laconic claim of closure was understood to soundly defeat the "presumption of openness" developed in this Court's First Amendment precedents. Instead of specific findings on the record, the trial court ordered verbally on September 25, 1997 that the courtroom be closed, simply expressing that the victim had claimed her "right" to testify in private.

The following day, after extensive argumentation of this Court's First Amendment decisions, the trial judge simply reduced the same basic ruling to writing, again

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[13] Three distinctions are worthy of note. First, the Act does not contain a "mandatory closure" provision, and in fact closure of judicial proceedings to the press or the public is not even mentioned in the Act's text. Second, the protected group is not limited to victims of sex crimes who are minors, or even victims of sexual offenses. All victims **or witnesses of any crime** are the "protected group" under the Act. Third, Rule 131 does not distinguish between minors or adults, and gives the trial court discretion to conduct the trial in private in regard to any sexual offense.

without asking the prosecution to substantiate the claim for closure.[14] The trial court made reference to paragraphs (a) and (j) of the Act's second article, as the basis for the determination of closure, but the former simply states that witnesses and victims have a right to "compassionate and dignified treatment" within all levels of the criminal justice system, while the latter similarly states that the witness is entitled to receive "the protection of the judge . . . in cases of harassment, insults, attacks and abuses to the dignity and the honor of the witness or of his family and relatives." App. 20. Both paragraphs are inapposite. The prosecution did not claim, as grounds for closure, that the victim in this case had been the object of insults or disrespect before trial. The district attorney simply expressed the victim's desire to close the courtroom, without making an argument based on privacy, or conduct by counsel or court officers deemed to be disrespectful.

Notably, the trial court does not even make an effort to explain what factual grounds there existed on the record, if any, to invoke the two cited paragraphs. Such

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[14] Instead of making factual determinations, the trial court made a narration of the hearing, without placing on the record the arguments advanced by the parties:

> In the case at bar the Court excluded the representative from El Vocero from the courtroom as part of the claim presented by the injured minor herein pursuant to the Victims and Witnesses Protection Act cited hereinbefore, which statute reflects a compelling interest of the State *prima facie* in the discharge of its duty to protect the minors of this country in and outside the courts. App. 20.

findings are precisely the kind that this Court has consistently required to be placed on the record. If, for the purposes of discussion only, there had been an incident during pretrial proceedings in which the victim had been mistreated, that incident would certainly have to be the object of findings on the record. Moreover, if disrespect or undignified treatment towards the victim had already materialized, the trial court would still have to adopt specific determinations as to why less burdensome means of protecting the witness than total closure would be impractical or ineffective.

From the proceedings in open court on September 25, 1997, it can be clearly seen that the trial court did not close the courtroom because of a factual situation prevailing in the courtroom. On the contrary, Judge Soto-Ríos only made reference to the constitutional right to privacy of the victim under the Puerto Rico Constitution, and concluded that simply claiming the right to privacy is sufficient to exercise the discretionary power granted to the trial judge by Rule 131. The victim's right to privacy, as the legal basis for defeating the presumption of openness made applicable under the First Amendment, cannot bring about "automatic closure" for the same reason that mandatory statutory closure failed in *Globe Newspaper*. In the present situation, the trial court could not rely on the victim's privacy claim in order to sidestep the procedural and substantive requirements established by this Court's precedents in regards to case-by-case adjudication.

The trial court declined to notify interested parties, such as petitioners, before proceeding to summarily close the trial. This also was error, since "for a case-by-case approach to be meaningful, representatives of the press

and general public 'must be given an opportunity to be heard on the question of their exclusion.' " *Globe Newspaper*, supra, 457 U.S. at 609, n. 25, quoting *Gannett Co. v. DePasquale*, 443 U.S., at 401 (Powell, J., concurring).

The exception made of petitioner Mr. González, permitting his presence on the second day of trial, is also unconstitutional. A journalist cannot be required to prove that he was present in the courtroom during the pretrial testimony of the victim. This procedure would naturally be interpreted, as it was in this case, to exclude all members of the press who cannot prove such diligence. The right of the press to be present at trial cannot be made to depend on having covered preliminary hearings. This method of "pre-qualifying" members of the press would reward media with unlimited resources, while penalizing those that for any reason could not, or chose not to, cover a specific case's pretrial proceedings. The "presumption of openness" would cease to exist, while criminal prosecutions that for any reason would be seen as unimportant in the pretrial stage, would remain beyond the reach of the press at trial, no matter how important and newsworthy the case may have become.

CONCLUSION

The closure of trial by the trial court ignored well-settled precedents of this Court, instead inverting the burden of proof and practically making closure of trial a foregone conclusion. The right of access to trials by the press and the public guaranteed by the First Amendment requires that specific findings be made on the record after

receiving evidence to be produced by the interested party justifying closure, and that such an extreme measure is essential and also narrowly tailored. The closure orders issued by the trial court abysmally fail to conform to the First Amendment requirements of this Court, and they must be declared unconstitutional.

We respectfully request that this Court issue a Writ of Certiorari to the Supreme Court of Puerto Rico, and that it reverse all orders and opinions issued by the courts below, as repugnant to the First Amendment rights of petitioners.

Respectfully submitted, in Washington, D.C., this 20th day of May, 1998.

JUAN R. MARCHAND-QUINTERO
Counsel of Record for Petitioners
P.O. Box 9024227
San Juan, Puerto Rico 00902-4227
Tel. (787) 721-2495
Fax (787) 725-3066

CERTIFIED TRANSLATION

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
BAYAMON SUPERIOR PART

THE PEOPLE OF PUERTO RICO	*	CRIM. NO. DHO 97-G0043 et al
V.	*	RE:
CARLOS NEGRÓN ROSARIO	*	STATUTORY RAPE et al

****

TRIAL

DATE	:	September 25, 1997
TIME	:	
LAW OFFICE	:	Francisco Ortiz Santini,
ADDRESS	:	Esq.
HELD	:	Puerto Rico Superior Court
	:	Bayamón Part
	:	Criminal Section

APPEARING PARTIES

HONORABLE JUDGE:

Hon. Julio Soto Rios

FOR THE JUSTICE DEPARTMENT:

Hon. State Attorney Wanda Vásquez Garced

FOR THE DEFENSE:

Atty. José Arzola Méndez

EL VOCERO NEWS REPORTER:

Mr. Victor González Orta

HONORABLE JUDGE:

At sidebar, the prosecuting attorney petitioned for the exclusion of the public. Same was objected to by the defense. In terms of her petition, the prosecuting attorney may go ahead so that oral arguments are received and pertinent direction be given to it later.

PROSECUTING ATTORNEY:

Yes, your Honor. By virtue of Rule 131 of Criminal Procedure, the Justice Department petitions . . . excuse me, as we have done in previous occasions . . . precisely, the history and the legislative intent is to protect victims of crimes, minors, in cases of incest, rape, sodomy, seduction, and lustful or indecent acts. And by virtue of same, we are going to petition the Court to exclude the public as the rule establishes. Only those persons with a right to be present. We understand it is the best procedure, and by virtue of Public Law Number 22 of Victims and Witnesses Protection, it has been requested by the injured person, and we are reproducing said request to the Court.

HONORABLE JUDGE:

Counsel . . . on this last detail, counsel stated that the young lady herself had requested the exclusion pursuant to the Victims Act.

PROSECUTING ATTORNEY:

Yes, Your Honor, that is correct.

HONORABLE JUDGE:

Counsel, those are the two arguments, Rule 131, as established in the rule, and the Victims and Witnesses

Protection Act. Those are the Prosecuting Attorney's arguments that are being submitted. Counsel may go ahead with his presentation.

DEFENSE:

Your Honor, we oppose the Prosecuting Attorney's petition to deny Mr. Carlos Lebrón Rosario his right to have this trial held in public, Your Honor. And said right to a public trial, Your Honor, is predicated on not having what in earlier times occurred, as your Honor pointed out, when cases were heard at night, behind locked doors, and the person was judged, and no one would find out what was going on there.

And this right to a public trial, which in fact cost much effort and sacrifice, who knows, even blood, to obtain, was consecrated in the Constitution of Puerto Rico and that of the United States to prevent, precisely, that the people, that the persons who have a right to know about a cause of action, because, ultimately, the People of Puerto Rico . . . in a similar action, is one of the injured parties, Mr. Carlos Negrón Rosario would have the opportunity of having his trial not heard behind closed doors, to guarantee precisely a series of rights that are basic and essential in order to judge a person impartially.

Judge, Rule 131 of Criminal Procedure establishes that:

> "In suits for incest, rape, sodomy, seduction, lustful or indecent acts, and in indecent exposure or the attempt thereof, the court may exclude the public from the courtroom during the injured person's testimony, admitting only those persons who have a legitimate interest in

> the case, such as court officials and the party's lawyers and relatives. Prior to the order of exclusion, the court shall hold a private hearing to determine if the injured person needs this protection during his testimony."

Arguing both parts, Your Honor, number one, it does not constitute the hearing. Number two, this aggrieved party, Sharon Miranda, Your Honor, has already testified on three occasions, and on the three previous occasions that she testified she has done so in public. Everyone has had the benefit of listening to Sharon Miranda's testimony.

HONORABLE JUDGE:

On what occasions has that been so?

DEFENSE:

At the preliminary hearing, Your Honor, at the preliminary hearing on appeal, and she at . . . I imagine that in Rule 6. I was not present, but she must have testified.

HONORABLE JUDGE:

But Rule 6 is not a public hearing.

DEFENSE:

Well, we . . . correct, two, the preliminary hearing and the preliminary hearing on appeal. And she has testified very well. That is, at no time has she manifested an interest that the trial not be held publicly, she has not shown any objection whatsoever, she has testified in a flowing manner to all the questions posed to her. And now is the first time, Your Honor, that sister counsel for the Justice Department brings it fourth precisely to deny

Carlos Negrón Rosario said right to a public trial. Her mere argument that she is a minor and that it is a statutory rape crime is not enough for the court to order the exclusion of the public from the courtroom and deprive this young man from said right which is a constitutional one.

Notice that even the rule does not talk about statutory rape. None of the crimes that I read to you mentions statutory rape, it says "rape," but there is a very large difference between one criminal offense and the other.

Your Honor, I understand that given the fact that this young lady had testified previously, that the preliminary hearing was conducted normally, without any type of interruption, in two previous occasions, the fact that a hearing has not been held for Your Honor to determine whether it is truly warranted . . . to deprive Mr. Carlos Negrón Rosario from said right to a public trial. And on the other tip of the scale, taking this young man's constitutional right to a public trial, to exclude and deprive said right from Mr. Carlos Negrón Rosario is not justified. Those are my arguments.

HONORABLE JUDGE:

As to the Victims and Witnesses Act?

DEFENSE:

Pardon me, Judge?

HONORABLE JUDGE:

As to the prosecutor's argument about the Victims . . . Act.

DEFENSE:

The same argument, Your Honor.

HONORABLE JUDGE:

The same one?

DEFENSE:

The same one we have made.

HONORABLE JUDGE:

The same one. Any reply from the prosecutor?

PROSECUTING ATTORNEY:

Judge, we would like to reply . . .

HONORABLE JUDGE:

As to the hearing. . . .

PROSECUTING ATTORNEY:

We understand . . .

HONORABLE JUDGE:

. . . as to the closing. The arguments to reply to are those concerning the hearing addendum.

STATE ATTORNEY:

Judge, this is the hearing that the rule establishes. A private hearing without the jury to determine the need for this hearing to be held outside the public's presence. And I really do not remember why brother counsel says that the other hearings were in public because they were not in public. The fact that the courtroom was not locked

does not mean that it was outside the jury's presence, without persons present. What happens is that it was at hours when there was no one in the courtroom any longer and that is why the room was not locked. But Sharon Miranda has always testified outside the presence of the public and persons. And what the rule refers to concerning the hearing, that is what we are holding as a question of necessity.

In relation to the issue of the crime of rape, we will not argue because the crime rape is one. And statutory rape is a component within rape.

DEFENSE:

Your Honor, the aspect of whether or not she testified in public earlier is easy to corroborate. The first hearing was held before the Honorable Judge Iris Pierluisi and she could testify concerning that particular issue. And the second preliminary hearing on appeal, because they fell . . . there was cause in the cases of . . . two cases of statutory rape and one for misappropriation, held precisely in this very same room, before Honorable Judge Velma González, and I was, and the door was . . . was . . . open and the public was present, Your Honor.

HONORABLE JUDGE:

Fine. What we must establish first is that they are two claims of a complementary, but different nature. The first one is articulated in Rule 131 that was object of amendments, since according to a series of cases, a progression of cases within the federal jurisdiction, endorsed by the U.S. Supreme Court, with victims of crimes, minors, specifically, children, little girls, the courts of

instance excluded the defendants for two reasons: first, to allow children victims of a traumatic situation to be able to testify effectively about the facts that they knew, since the presence of the defendants was intimidating, on one hand; and secondly, since it would open the wounds from the trauma and cause more or similar damage or open the flow of the mental and psychological damage produced by the facts imputed. That is number one.

And number two, because the courts realized that the only way to conduct the proceedings satisfactorily is to exclude the public because they are minors, in which fear, shame, the trauma inflicted operate.

That is why it is legislated in Puerto Rico. What the Supreme Court has been underpinning is the right to privacy that crime victims have, and the right of the State as *parens patriae*, to prevent, to safeguard minors; a principle that cannot be, because of public policy and because . . . it is a "Compelling State Interest," that is, a State interest that is legitimate, compelling, unrenounceable, undelegable, those minors had to be protected, procedurally speaking.

That is the reason the rule, from the time it was given shape . . . from the time it was shaped . . . that is, prior to said legislation, the first clause of Rule 131 stated:

"Unless otherwise provided by law and by these rules, the testimony of a witness in all trials shall be oral and in open court." That is, in the text itself of the law there is an exception. The exception is that when it is legislated for it to be otherwise, it will not be public. That is the first foundation that . . . appears from the rule. That is, the rule itself contemplates that in appropriate cases, prior to

the existence of that piece of legislation, the judge had discretion to exclude the public. And those rules have accrued more than twenty-five years of procedural experience and they have not been . . . Why? Because a judge cannot be deprived of discretion to set forth guideline procedure.

Number two, the rule talks about the trial and the procedures for the preliminary hearing and preliminary hearing on appeal. Rule 6, Rule 6 on appeal, none in fact, are trials; they are preliminary incidents to the trial. That was already typified.

Fourth: "The fact that the courtroom had not been locked, and there not being controversy that there was no other public apart from the cause being heard, she had testified in private," without the public.

On the other hand, and that is the argument to which the defense has not replied, the Victims and Witnesses act. That law . . . that law is the foundation for which . . . exception is noted. And the text of Rule 131 states it clearly. And in this case, the legislation is to defend, protect the legitimate interest of the victim that his or her case, his or her testimony, at least, be in private, outside the presence of the public, not that the trial . . . not be public. It is [the victim's] testimony, and that is a guarantee within the parameter of the interest.

Concerning the hearing, I do not believe that the hearing has to be an interlocutory hearing. That has not been resolved by any court. It has to be a hearing outside the presence of a jury and in this case without the presence of the jury. Had it been through a court of law, it would have been an interlocutory hearing, that is, an

interlocutory incident, prior to the presentation of the evidence in the case.

Another argument that we have provided for the record, we Grant the petition from the Justice Department, and we order in this act the immediate removal of all persons not having any appeal in this case, until the young lady Sharon Miranda testifies in full. Let the State order so and let her exercise her right to . . .

DEFENSE:

Your Honor, by means of reconsideration.

HONORABLE JUDGE:

Denied.

DEFENSE:

We have an additional argument.

HONORABLE JUDGE:

On a new argument that has a constitutional element, that has been resolved, and cite the case and the rule.

DEFENSE:

We shall make an additional argument, on the basis of the Constitution, and as to what Your Honor stated that in the preliminary hearings on appeal there was no public. The hearing was in the morning and filled with people, there were perhaps more . . . than are present today.

The argument that we made before Your Honor was not in the sense that since the hearing was public, it must be public later at the trial. What we are saying, Your Honor, is that in the balance of interests, of whether the

right to a public trial should or should not be relinquished by Mr. Carlos Negrón Rosario, one of the factors to consider is the times that this young lady has testified, and she has testified in public, and she has had no objection whatsoever to testify about the facts imputed to Mr. Carlos Negrón Rosario herein.

Concerning the aspect of the Victims and Witnesses Protection Act, Your Honor . . . the law does not say that every time there is a case . . . where there is rape, incest, statutory rape, any of those types of crimes, the public is going to be excluded. Should the court acquiesce to what sister counsel from the Justice Department is seeking, in a way what it would be saying is that every time there is a case involving a minor who has been victim of a sexual crime, then, the public has to be excluded. Because no evidence has been presented here, Your Honor, to justify that this man be deprived of his right to a public, fair and impartial trial.

If Your Honor grants, it, if this court accedes to what has been manifested . . . to what sister counsel from the Justice Department is attempting to do, I understand, Your Honor, that Mr. Carlos Negrón Rosario's right to a public trial would be violated. Because there is no indication whatsoever, Your Honor, that a damage, and injury would befall on this alleged victim of . . . witness, Your Honor.

HONORABLE JUDGE:

Nothing that counsel has stated is a new argument, nothing. What I am telling you is that the preliminary hearing is not the trial that the rule speaks about, and

Criminal Law is strict on principle of legality, and it is contemplated in the jurisprudence and statutorily.

Secondly, I told you twice to reply to the argument concerning the Victims Act, the presentation of evidence need not take place as long as the victim claims her right pursuant to the law, and she is claiming it. And this is a right of a constitutional nature that the victim has, also protected statutorily, because it is the right to privacy. And that is a right with as much or equal weight to that of a fair, impartial and public trial.

On what counsel has just stated, Denied. There need not be any piece [of evidence] as long as she claims it, and she has claimed it. And you have not replied to the contrary. She claimed it and the court grants it, the immediate removal of all public that is not the Police personnel in this case, or the Prosecuting Attorneys from the Justice Department who may wish to remain. All the public, including the press.

NEWSPAPER REPORTER:

Judge, and do you . . . also rule as to the people's interest? Since this is a case that is important.

HONORABLE JUDGE:

What happens is that the victim has requested that the public be excluded, including the press, from the hearing.

– THE ROOM IS CLEARED –

CERTIFICATION OF TRANSCRIBER

I HEREBY CERTIFY that the foregoing is a true, correct transcript of the record submitted to the firm Crespo & Rodriguez, of the partial re-recording of the hearing in the above-captioned case.

In San Juan, Puerto Rico, on December 24, 1997.

[signature]

ROSAURA CRUZ FORTIER

Transcriber

[T.N.: Each Page bears footer]

[company CRESPO & RODRIGUEZ Logo]
Tel. (787) 763-8018
Fax (787) 767-8217

-CERTIFICATION OF TRANSLATOR-

I HEREBY CERTIFY: that I have translated into English the foregoing fifteen-page document, as submitted in Spanish by the interested party, and that said translation is true, and correct to the best of my knowledge and abilities.

12 May 98
/s/ Aida Rios-Franco
AIDA RIOS-FRANCO
U.S. CERTIFIED COURT INTERPRETER
A.T.A. ACCREDITED TRANSLATOR

CERTIFIED TRANSLATION

COMMONWEALTH OF PUERTO RICO
COURT OF FIRST INSTANCE
BAYAMON SUPERIOR PART

THE PEOPLE OF PUERTO RICO	*	CRIM. NO. DHO97G0043 et al
V.	*	RE:
CARLOS NEGRÓN ROSARIO	*	STATUTORY RAPE et al
DEFENDANT	*	

****

RESOLUTION

On September 24 of this year concluded the jury selection in the case at bar, and upon petition by the parties, it was agreed that a gag order be issued to its members for them to abstain from hearing or hearing through the news media, whether radio, written or TV, any comment, news item, report, review etc., concerning this case. The foregoing Order originated from the exhaustive examination by Atty. José Arzola, attorney for defendant herein, to the panel during the selection process with respect to the contact that they may have had with the facts of the case through the news media. Pursuant to the state of law that prevails in this jurisdiction concerning excess publicity applicable to these causes, the Court asked the parties whether they were interested in having the Jury selected sequestered or the gag order mentioned above so that the defendant would have a fair and impartial trial. Before the present Jury was finally selected, the parties chose the gag order, and same was

issued in open court once the Jury in the case at bar was formed and sworn.

Yesterday, Prosecutor Wanda Vázquez, representing the Justice Department in the instant case requested that the public be excluded from the courtroom while the injured party, minor Sharon Miranda Méndez, 14 years old, testified, pursuant to Rule 131 of Criminal Procedure; and because the minor had made a claim to her in that respect in accordance with the Victims and Witnesses Protection Act, 25 LPRA Sections 972-973c. Attorney Arzola objected to the exclusion of the public present in the courtroom since he understood: that the right of defendant to a public trial was violated by excluding from the courtroom the persons present in same; that it prejudiced his right to confront the prosecution witnesses; that the minor above had testified in open court in the incidental proceedings of the Preliminary Hearing and the Preliminary Hearing on Appeal; and that the Prosecutor had not presented evidence of the need to exclude the public in a separate hearing.

The Court resolved that Rule 131 of Criminal Procedure grants ample discretion to the Judge to exclude the public from the courtroom, and with that aim, the Rule states: "Unless otherwise provided by law and by these rules, the testimony of a witness in all trials shall be oral and in open court . . . " In the case at bar, the exception provided by law for the exclusion from the courtroom is the victims and witnesses act cited above; hence, it must be concluded that the presence of the public in the courtroom while a minor testifies, such as in the instant case, is not an absolute right of the defendant. Furthermore, the Rule provides that:

> "In suits for incest, rape, sodomy, seduction, lustful or indecent acts, and in indecent exposure or the attempt thereof, the court **may exclude** the public from the courtroom during the injured person's testimony . . . "

The forecited text ratifies the discretion of the Court of First Instance to exclude the public from a series of crimes, one of which the defendant herein is charged with, to wit, the modality of statutory rape; in harmony with the public policy contained in the special legislation cited above. Furthermore, Rule 43, item e of Evidence confers identical discretion to the Court to exclude or not witnesses from the courtroom. **Pueblo v. Ortíz Tirado 116 DPR 868.**

Concerning the argument that the young lady had previously testified in "public," the evidence received by the Court is that at the time and/or moment she testified there was no person physically present in the courtroom, thus it was not necessary to exclude any public; the fact alleged that the courtroom door was not locked has no merit since there was no access to control whatsoever for the reasons stated earlier. It must be pointed out that preliminary hearings are incidental proceedings prior to trial and not the trial itself. A Preliminary Hearing is an incidental procedure of limited scope both in terms of the presentation of evidence (the Prosecutor need not present all the witnesses), as well as in its reach (which is reduced to a determination of cause to file an accusation, rather than a determination on the merits of the case). **Pueblo v. Rodríguez Aponte 85 JTS 66, pp. 4084-4085.** Therefore, all the norms and/or rights of the defendant are not applicable in said incidental phase of the case.

Today, Atty. Juan R. Marchand, representing the Newspaper El Vocero appeared and requested that the Court allow the presence in the courtroom of Mr. Victor González Orta, reporter for said newspaper, during the testimony of the minor mentioned hereinabove. Among other things, he brought forth that during the incidents of the preliminary hearing and preliminary hearing on appeal said newspaper reporter had been present during same. Prosecutor Vázquez accepted the presence of the newspaper reporter during those hearings.

In the matter of **Globe v. Superior Court 73 L 2d ed, pg. 248,** it was resolved that when a statute provides for the **mandatory exclusion** of the public and the news media under any circumstances in cases of sexual crimes in which the victim is a minor, said provision violates the First Amendment of the U.S. Constitution. In the case at bar the Court excluded the representative from El Vocero from the courtroom as part of the claim presented by the injured minor herein pursuant to the Victims and Witnesses Protection Act cited hereinbefore, which statute reflects *prima facie* a compelling interest of the State in the discharge of its duty to protect the minors of this country in and outside the courts. With that aim, see the Bill of Rights of Victims and Witnesses of Puerto Rico, items (a) and (j) that evidence this compelling interest, and Puerto Rico's public policy on this matter. In addition, the discretionary use that the forecited Rule 131 recognizes for the Court in this class of cases specifically enumerated by said Rule.

In view of this unexpected development in the proceedings in the case at bar, the Court shall allow the

presence of Mr. González Orta because of his prior presence in the preliminary hearing phase mentioned above, but not the general public. The exclusion of the public shall remain in effect during the time in which the minor testifies; once her testimony concludes, the session shall be reopened to the community. This way we address the claim by the minor in accordance with the Victims and Witnesses Protection Act and her constitutional right to privacy.

Furthermore, the Court issues a new Gag Order similar to that for the Jury to Prosecutor Wanda Vázquez, Atty. José Arzola and Mr. José Negrón Cruz, paralegal accompanying Atty. Arzola in the instant case whose presence the Court has allowed by virtue of **Pueblo v. Tirado** *supra*. The parties may not on their own or through third parties give information about the proceedings, testimony, evidence or any other matter relative to the hearing in the case at bar to any news media of the country while the hearing in the instant case lasts. We adopt this measure to avoid major consequences such as a "mistrail." A violation of the Order herein shall entail said "mistrial" and criminal contempt sanctions to the party that were to violate said Order.

The parties are hereby notified in open court with a copy of the Resolution herein.

Issued in Bayamón, Puerto Rico, on September 26, 1997.

[round ink stamp]
COMMONWEALTH OF
PUERTO RICO

GENERAL COURT OF
JUSTICE COURT OF FIRST
INSTANCE BAYAMON
SUPERIOR PART

[signature]
JULIO SOTO RIOS
SUPERIOR COURT
JUDGE

[Each page bears one set of illegible initials on the left-side margin]

–CERTIFICATION OF TRANSLATOR–

I HEREBY CERTIFY: that I have translated into English the foregoing six-page document, as submitted in Spanish by the interested party, and that said translation is true, and correct to the best of my knowledge and abilities.

12 May 98

/s/ Aida Riós-Franco
AIDA RIOS-FRANCO
U.S. CERTIFIED COURT INTERPRETER
A.T.A. ACCREDITED TRANSLATOR

CERTIFIED TRANSLATION

COMMONWEALTH OF PUERTO RICO
IN THE CIRCUIT COURT OF APPEALS
BAYAMON – II REGIONAL CIRCUIT

THE PEOPLE OF PUERTO RICO V. CARLOS NEGRÓN ROSARIO DEFENDANT CARIBBEAN INTERNATIONAL NEWS CORP. (EL VOCERO DE PUERTO RICO); VICTOR GONZALEZ ORTA PETITIONERS-INTERVENORS	KLCE9700987	CERTIORARI from the Court of First Instance Bayamón Superior Part DHO97G0043 et al. RE: STATUTORY RAPE et al.

PANEL COMPOSED OF ITS PRESIDENT, JUDGE GONZALEZ ROMAN AND JUDGES CORDOVA ARONE AND SEGARRA OLIVERO.

RESOLUTION

San Juan, Puerto Rico, on September 30, 1997.

Caribbean International News Corp. (El Vocero de Puerto Rico) and Victor González Orta (Mr. González Orta) appear before this Court through petition for *certiorari* as well as with a petition for ruling in aid of jurisdiction and hearing, in which they pray that we

order the Court of First Instance, Bayamón Superior Part, to paralyze the proceedings in the matter of *El Pueblo de Puerto Rico v. Carlos Negrón Rosario* (Mr. Negrón Rosario), and in which they furthermore pray for a reversal of the resolution issued on September 26, 1997, which excludes the public from the courtroom during the period of time that the minor, the injured party in the case at bar, testifies.

On September 24, 1997, the jury trial against Mr. Negrón Rosario for the crime of statutory rape *et al* began. From the resolution appealed, it appears that the parties were in agreement that a gag order be issued; *i.e.*, that the members of the Jury be ordered to abstain from hearing or reading in the news media on radio, print or TV, any commentary, news item, report, etc., concerning the case being heard.

On September 25, 1997, the Justice Department, through Prosecutor Wanda Váquez, petitioned that the public be excluded while the injured party testified. The Justice Department based its petition on Rule 131 of Criminal Procedure, 34 L.P.R.A. App. II, R. 13, and on the claim by the injured party herself who had expressed to her that she wanted to testify without the presence of the public in the courtroom, which according to the Justice Department is in order pursuant to the Victims and Witnesses Protection Act, 25 L.P.R.A. Sec. 972-973C. The defense presented its objection to said petition. Judge Soto Rios granted the Justice Department's petition and ordered the public that was present in the courtroom to clear same. At that moment, petitioner, Mr. González Orta, addressed the Judge and asked to remain in the

room because he had been reporting the case as a reporter. Nevertheless, he was ordered to abide by the order and leave the courtroom. On the following day, Atty. Juan R. Marchand, representing the Newspaper El Vocero, appeared before the Hon. Judge Soto Rios and prayed for the presence of Mr. González Orta in the courtroom during the testimony by the minor. The Court *a quo* reconsidered its order and allowed Mr. González Orta's presence in the courtroom during the testimony by the minor. Nevertheless, the trial court maintained in effect that part of the order which provides that "the public shall be excluded from the courtroom during the time the minor testifies." It provided that "once said testimony concludes, the session shall be reopened to the community."

Disagreeing with this decision, Mr. González Orta appealed to us bringing forth that as a reporter for the Newspaper El Vocero de Puerto Rico, both he and the newspaper have a continued journalistic interest in reporting the defendants's trial. He maintains that, given the delicate state of facts of the case, El Vocero had assigned one of its female reporters, Mrs. Aiola Virella, to cover the details of the judicial process together with Mr. González Orta. In synthesis, petitioners submit that to the extent that the Resolution of September 26 states that Mr. González Orta, by virtue of having been present during previous phases of the process, can now remain in the courtroom while the minor testifies, Mrs. Aiola Virella is prevented from being present and from accompanying Mr. González Orta.

On the very same day that the Petition in Aid of Jurisdiction was filed before the Office of the Clerk of this

Court, we received within two hours by fax a resolution from the trial court dated September 29, 1997, wherein it is indicated that the Newspaper El Vocero, in the Petition in Aid of Jurisdiction, announces for the first time that Mrs. Aiola Virella has been assigned, in addition to Mr. González Orta, to cover the above-captioned case. It clarifies that when the resolution of September 26, 1997 was issued, reporter Virella's intervention was not a factor that the Court had present, nor was it informed by the reporter from El Vocero so as to settle the controversy with that element taken into consideration.

The last decision issued by the trial court reflects that at the time said court issued the resolution, it was unaware that Mrs. Virella had been assigned to cover the above-captioned case together with Mr. González Orta. Hence, its ruling was based on the information and allegations presented by the parties when they discussed the foregoing order in which the general public was ordered, including the media, to clear the courtroom.

If El Vocero already knew that it would be necessary to assign Mrs. Virella to the case, it should have informed the Court of First Instance at that moment. We understand that in those circumstances the petition is premature. To bring it forth in this phase would cause this Court to be placed in the position of issuing an advisory opinion on same, which we cannot do.

In the matter of *El Vocero v. Junta de Planifiación*, 121 D.P.R. 115, the Puerto Rico Supreme Court reiterated the much-used norm of judicial abstention in which it is established that "if no genuine controversy arises after the pertinent investigation, the court, depending on the

circumstances, shall dismiss the case from the outset or deny review without passing upon the merits of the argument." Courts of justice exist to settle genuine controversies between opposing parties that have a real interest in obtaining a remedy that will affect their legal relations. *Comisión de la Mujer v. Srio. de Justicia,* 109 D.P.R. 715 (1980); *E.L.A. v. Aguayo,* 80 D.P.R. 552 (1958).

We are certain that, should any inconvenience arise with respect to the arguments brandished by petitioners, the trial court shall consign the elements it may take into account to resolve the controversy, in accordance wit the applicable law in effect and applicable analytical jurisprudence.

On the other hand, the text of the last resolution issued by the trial court denotes that, had it been informed of the fact of Mrs. Virella's presence at the hearing, same would have been allowed.

Wherefore, the petition for paralyzation of proceedings is hereby denied as well as the motion prayed for as premature.

It is hereby ordered that the General Clerk of this Court notify the Resolution herein by fax and by ordinary means.

So pronounced and ordered by the Court and certified by the General Clerk.

[signature]
[hw.] General Clerk
AIDA ILEANA OQUENDO
GRAULAU
GENERAL CLERK

-CERTIFICATION OF TRANSLATOR-

I HEREBY CERTIFY: that I have translated into English the foregoing five-page document, as submitted in Spanish by the interested party, and that said translation is true, and correct to the best of my knowledge and abilities.

12 May 98

/s/ Aida Riós-Franco
AIDA RIOS-FRANCO
U.S. CERTIFIED COURT INTERPRETER
A.T.A. ACCREDITED TRANSLATOR

CERTIFIED TRANSLATION

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

THE PEOPLE OF PUERTO RICO – APPELLEE

V.

NEGRON ROSARIO, CARLOS – APPELLANT

CASE: CC-97-0717 CRIM. CASE: DH097G1143
CIRC. CASE: KLCE9700987

SEX CRIME
CIVIL ACTION
OR CRIME

MARCHAND QUINTERO JUAN R
PO BOX 9024227
SAN JUAN, PR

00902-4227

NOTICE

I HEREBY CERTIFY THAT RE PETITION FOR CERTIORARI
THE COURT ISSUED THE RESOLUTION
ATTACHED HERETO:

HON. ATTORNEY GENERAL – SAN JUAN, P.R. – 00902
ARZOLA MENDEZ, JOSE E. – CALLE 30 S.O. #1678 – LAS LOMAS – RIO PIEDRAS, PR-00

[ink stamp]
RECIEVED
MAR 4 1998

SAN JUAN, PUERTO RICO ON ~~02~~ [hw] 3 MAR MARCH 1998

ATTY. ISABEL LLOMPART ZENO
CLERK OF THE SUPREME COURT

[illegible initials]
DEPUTY CLERK

CERTIFIED TRANSLATION

IN THE PUERTO RICO SUPREME COURT

The People of Puerto Rico

Appellee

v. No. CC-97-717 Certiorari

Carlos Negrón Rosario

Appellee-Defendant

Caribbean International News Corp., etc.

Petitioner-Intervenors

RESOLUTION

San Juan, Puerto Rico, on February 27, 1998.

The above-captioned Petition for Certiorari is hereby denied.

So ruled by the Court and certified by the Supreme Court Deputy Clerk. Associate Justice Mr. Rebollo López did not intervene.

[signature]
Carmen E. Cruz Rivera
Supreme Court Deputy Clerk

§ 973. Rights of Victims and witnesses of crimes – Purpose

In harmony with the public policy of the Commonwealth of Puerto Rico of providing protection and assistance to victims and witnesses during judicial proceedings and investigations carried out pursuant to sections 972-972j of this title, the Bill of Rights of Victims and Witnesses of Crimes is hereby adopted. – April 22, 1988, No. 22, p. 88, § 1, eff. April 22, 1988.

§ 973a. Rights of victims and witnesses of crimes – Bill of Rights

Any person that is a victim or a witness of a crime in the Commonwealth of Puerto Rico shall be entitled to:

(a) Receive compassionate and dignified treatment from the public officials and employees that represent the agencies that compose the criminal justice system, during the phases of investigation, proceedings, sentencing and subsequent disposition of the criminal case filed against the person responsible for the crime.

(b) Have access to a telephone, free of charge, so that the person can communicate with his family or next of kin or with his legal counsel, as soon as he is in contact with the criminal justice system.

(c) Claim the confidentiality of the information regarding his address and telephone numbers when he deems it necessary for his personal safety and that of his family, as well as the communications privilege between the victim and his counsel guaranteed by Rule 26-A of the Rules of Evidence, App. IV of Title 32.

(d) Receive all the protection services guaranteed by sections 972-972j of this title for himself and his family against all possible threats and damages that they may suffer from the person responsible for the crime, his henchmen, friends and relatives, including, without it being understood as a limitation, the emergency telephone line, shelter, change of address and identity and direct surveillance.

(e) Be oriented as to all the medical, psychological, social and financial assistance programs that are available in the Commonwealth of Puerto Rico, to receive the correct information from the officials and employees of public and private agencies that administer these programs and to be guided as to the procedures for requesting such services.

(f) Receive, for himself and his family, all those services and benefits provided by medical, psychological, social and financial assistance programs that are available in the Commonwealth of Puerto Rico and for which he is eligible.

(g) Be notified of the development of the investigation, proceedings and sentencing of the person responsible for the crime, be consulted prior to settling a complaint or accusation against the author of a crime and be informed of the procedures after the sentencing when the victim or the witness so requests the Puerto Rico Police, the Special Investigations Bureau and the District Attorney's Office.

(h) Have the District Attorney's Office promote the speed handling of the criminal cases against the person

responsible for the crime and especially cases of sexual crimes, abuse and domestic violence.

(i) Be present at all stages of the procedures against the person responsible for the crime when the laws and rules of procedure allow it, except in those cases prohibited by the court because the victim is a witness in the criminal procedure or due to other circumstances, and that the Puerto Rico Police, the Bureau of Special Investigations or the District Attorney's Office promptly inform the person when his presence is not necessary in the court.

(j) Receive, at all times that he is giving testimony in a court or before a quasi-judicial body, respectful and dignified treatment from the lawyers, prosecutors, judges and pertinent officials and employees and the protection of the judge or presiding official in cases of harassment, insults, attacks and abuses to the dignity and the honor of the witness or of his family and relatives.

(k) When dealing with rape victims to not be questioned on their sexual background pursuant to the provisions of Rule 21 of the Rules of Evidence, App. IV of Title 32.

(l) When dealing with a minor or disabled person to not be questioned as to the extent of the duty to say the truth, that he not be sworn or confirmed in this sense, and to file the corresponding suits for sexual offenses and abuse within the extended prescriptive term provided in section 3412 of Title 33.

(m) Have available to them, in the court where the judicial proceedings are being held against the person

responsible for the crime, and area that is separated from the accused, his henchmen, friends and family and, when said separate area is not available, to receive other protective measures.

(n) Have him relieved from personally appearing at the hearing to determine probable cause for arrest, when said testimony conveys a risk to his personal safety or that of his family or when his is physically or emotionally unable to do so.

(o) Submit to the sentencing court a report on the financial and emotional effect the commission of the crime has caused him, as guaranteed by Rules 162.1 and 162.2 of the Rules of Criminal Procedure of 1963, App. II of Title 34.

(p) Receive the financial compensation due him for his appearance in the judicial proceedings, as well as the granting of judicial leave and reinstatement in his employment provided by section 752 of Title 34, sections 193-193c of Title 29, sections 1301-1431 of Title 3, and section 4445 of Title of Title 33.

(q) Receive the benefit of restitution by the person liable for the crime in all those cases in which the Penal Code of the Commonwealth of Puerto Rico or special laws thus provide it.

(r) Have all property that has been retained by pertinent authorities to be used as evidence returned to him as soon as possible. – April 22, 1988, No. 22, p. 88, §2, eff. April 22, 1988.